

CANADA / JUDGMENT

R. v. Coghill

2024 BCSC 607

COURT

Supreme Court of British Columbia

DECIDED

21 February 2024

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2024 BCSC 607 R. v. Coghill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Coghill,

2024 BCSC 607

Date: 20240221

Docket: 56221

Registry: Vernon

Rex

v.

Edward Scott Coghill and Stewart Wayne Tkachuk

Before: The Honourable Mr. Justice Gibb-Carsley

Oral Ruling on Voir Dire re Section 475 Application - Accused Absconding During Trial

Counsel for the Crown:

B. Bellrichard

Counsel for the Accused, Coghill:

D. Verdurmen

Counsel for the Accused, Tkachuk:

C. Mastop

Place and Date of Hearing:

Vernon, B.C.

February 21, 2024

Place and Date of Judgment:

Vernon, B.C.

February 21, 2024

- [1] THE COURT: These are my reasons for judgment in an application brought by the Crown under s. 475 of the Criminal Code, R.S.C.,1985, c. C-46.
- [2] This is a criminal trial of Edward Scott Coghill and Stewart Wayne Tkachuk for various alleged offences related to an alleged home invasion in Lumby, B.C., on the evening of September 17, 2019, and the early morning hours of September 18, 2019.
- [3] The trial commenced on December 13, 2023, with a voir dire in which Mr. Coghill challenged the facial validity of certain warrants and production orders to obtain information by the police. I dismissed those applications on January 23, 2024.
- [4] The trial proper was set to commence yesterday, February 20, 2024. Crown informed me yesterday that on February 19, 2024, the eve of trial, it came to the attention of the police that there was an issue with Mr. Tkachuk's GPS electronic monitoring. An investigation led to the discovery of the monitoring device, which I will describe in more detail in a moment.
- [5] Further, I note that Mr. Tkachuk did not attend trial yesterday when it was set to commence at 2:00 p.m. on February 20, 2024.
- [6] Crown advised me yesterday of the intention to bring an application under s. 475 of the Criminal Code, which allows, if a judge is satisfied that an individual has deliberately absconded, to continue the trial in the absence of that individual.
- [7] Yesterday, I adjourned the s. 475 application, in the hopes that Mr. Tkachuk would return to trial today, hopefully voluntarily or, if not voluntarily, having been apprehended by police authorities and brought to trial. However, neither apparently has occurred. This morning, February 21, 2024, Crown renewed the application under s. 475.
- [8] Another reason I wished to adjourn the matter to this morning was in order to allow the Crown, who has the onus of proving that the individual absconded, to obtain evidence if it so wished.
- [9] Counsel for Mr. Coghill takes no position on the Crown's application.
- [10] Counsel for Mr. Tkachuk opposes the application. This position is based on the fact that the evidence supporting the Crown's allegation that Mr. Tkachuk has absconded is only circumstantial. In other words, counsel for Mr. Tkachuk says that the Crown has not met its burden of proving that Mr. Tkachuk has absconded and voluntarily absented himself from the trial. Counsel for Mr. Tkachuk says another plausible reason that Mr. Tkachuk is not

present today may be that he is under duress or that his absence is caused by others in the community who may wish to do him harm.

- [11] I also note that Ms. Mastop, counsel for Mr. Tkachuk, confirmed her intention, pursuant to s. 475(4) of the Criminal Code, to continue to act on behalf of Mr. Tkachuk if I find that he has absconded and the trial should continue in his absence.

Legal Analysis

- [12] Section 475 of the Criminal Code provides that:

475 (1) Notwithstanding any other provision of this Act, where an accused, whether or not he is charged jointly with another, absconds during the course of his trial,

- (a) he shall be deemed to have waived his right to be present at his trial, and
- (b) the court may
 - (i) continue the trial and proceed to a judgment or verdict and, if it finds the accused guilty, impose a sentence on him in his absence, or
 - (ii) if a warrant in Form 7 is issued for the arrest of the accused, adjourn the trial to await his appearance

- [13] Our Court of Appeal in *R. v. Taylor*, 2010 BCCA 58, had reason to consider s. 475. In that case, our Court of Appeal found that the trial judge had erred in determining that Mr. Taylor had absconded. The Court considered the meaning of the word "abscond" in para. 8, where it wrote:

- [8] It is common ground that the meaning of "absconding" for the purpose of s. 475 is as defined by Martin J.A. in *R. v. Garofoli* (1988), 41 C.C.C. (3d) 97 at 141 (Ont. C.A.), affirmed on this point [1990] 2 S.C.R. 1421 at 1469:

...the word "absconds" in s. 431.1 [now 475] means more than mere failure to appear. In my view, the word "absconds" imports that the accused has voluntarily absented himself from his trial for the purpose of impeding or frustrating the trial, or with the intention of avoiding its consequences. Proof that the accused deliberately absented himself from the trial would of course permit the drawing of an inference as to the necessary intent.

- [14] At para. 9, the Court also provides that the Supreme Court confirmed that the onus is on the Crown to prove that the accused has absconded.

- [15] In *Taylor*, the Crown acknowledged that it had no factual basis to ask the court to draw that there was an inference of absconding: para. 13. The issue for the Court, and therefore the error found by our Court of Appeal, was that there was not sufficient proof that Mr. Taylor had deliberately or voluntarily absented himself from the trial.

- [16] It is with these legal principles in mind that I now turn to my discussion and analysis.

- [17] In respect to Mr. Tkachuk's non-appearance, I have no hesitation in concluding that he has taken deliberate steps to voluntarily absent himself from trial. He has met, in my view, by his actions, the definition of "absconding".
- [18] The Crown provided an affidavit of Constable Mike Trafananko of the Vernon, RCMP. While I acknowledge Mr. Tkachuk's counsel, Ms. Mastop's, submission that there is no direct evidence and there are other possibilities that could exist as to why Mr. Tkachuk is not present, on the evidence before me there is a strong inference available that Mr. Tkachuk took deliberate steps to voluntarily absent himself from trial.
- [19] I will now turn to the evidence before me supporting this conclusion.
- [20] Constable Trafananko attaches to his affidavit an occurrence report and it sets out, first, that Mr. Tkachuk, on October 31, 2023, was put under conditions for his release. Condition 7 required him to obey a curfew, essentially house arrest, between the hours of 11:00 p.m. and 6:00 a.m. every day, and that he must present himself to the door of the residence or by phone to a peace officer or bail supervisor who attends to check if he is in compliance with his curfew.
- [21] Condition 8 of those same conditions required that Mr. Tkachuk comply with the electronic supervision agreement, including the wearing and care for the electronic supervision equipment.
- [22] In the occurrence report, Constable Trafananko also provides that on February 19, 2024, at 8:24 p.m., he was requested by Central Monitoring to attempt to locate Mr. Tkachuk, who was believed to have removed his monitoring bracelet. Central Monitoring advised the bracelet was tracking to Okanagan Avenue near Longacre Drive. Constable Trafananko located the bracelet in the middle of the roadway. The bracelet appeared to have been cut and damaged possibly due to a vehicle driving over it. Constable Trafananko seized the bracelet and its parts from the middle of the roadway.
- [23] Constable Trafananko then, on February 20, 2024, at 51 minutes after midnight, attended to conduct a curfew check at the residence of Mr. Tkachuk. He knocked on the door and spoke to Nicole Watson, who advised that Mr. Tkachuk was home. Constable Trafananko requested to see him, so she closed the door and soon reopened it, advising she was unable to find him inside the house. Ms. Watson advised she went to bed around 8:00 p.m. that night. Mr. Tkachuk was home at that time. I note that the hours of 12:51 a.m. are outside of the curfew hours, thus giving some evidence that Mr. Tkachuk was voluntarily, or at least outside of his residence, during times he should be there because of his curfew.
- [24] In addition to the evidence provided by Constable Trafananko, I also note the obvious: Mr. Tkachuk did not attend yesterday at court for the trial. I had ordered him to appear at trial at the end of the voir dire and he was to appear on February 20. He did not.

- [25] Given the foregoing, I am satisfied that the Crown has met its burden to establish that Mr. Tkachuk has absconded for the purpose of impeding or frustrating the trial or with an intention of avoiding its consequences. Accordingly, pursuant to s. 475(1)(b)(i), I will continue the trial, proceed to judgment or verdict, and if I find Mr. Tkachuk guilty, I will impose a sentence on him in his absence.
- [26] Of course, I note that under s. 475(3), where an accused reappears at his trial that is continuing pursuant to subsection (1), he is not entitled to have any part of the proceeding that was conducted in his absence reopened, unless the court is satisfied that because of exceptional circumstances, it is in the interests of justice to reopen the proceedings. However, in my view, if Mr. Tkachuk reappears, he is able to participate with the trial as it continues.
- [27] Again, I note that Ms. Mastop has indicated that she will continue to act for Mr. Tkachuk pursuant to s. 475(4) of the Criminal Code.
- [28] This concludes my reasons.

"Gibb-Carsley J."

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